

**Hogan
Lovells**

July 5, 2016

BY CM/ECF

Mark J. Langer, Clerk
United States Court of Appeals
for the District of Columbia Circuit
United States Courthouse, Room 5523
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *EarthReports, Inc. v. FERC*, No. 15-1127 — Argued April 19, 2016

Dear Mr. Langer:

We submit as supplemental authority the Court's recent decisions in *Sierra Club v. FERC*, No. 14-1275 (June 28, 2016) (*Freeport*) and *Sierra Club v. FERC*, No. 14-1249 (June 28, 2016) (*Sabine*). *Freeport* and *Sabine* foreclose EarthReports's arguments (Opening Br. 33-47) that FERC had to measure the alleged environmental impacts of upstream natural gas production and downstream liquefied natural gas (LNG) consumption as part of its National Environmental Policy Act (NEPA) analysis.

The Court held in *Freeport* and *Sabine* that a FERC order authorizing activities that will facilitate LNG exports is not the legal cause of the purported environmental effects of induced natural-gas production or overseas LNG consumption for NEPA purposes. *Freeport*, slip op. at 16-18; *Sabine*, slip op. at 13-14. The Department of Energy's orders authorizing export, the Court explained, are "independent decision[s]" that "break[] the NEPA causal chain and absolve[] [FERC] of responsibility to include" upstream and downstream impacts in its NEPA analysis. *Freeport*, slip op. at 18.

The same is true here. Like in *Freeport* and *Sabine*, FERC concluded that its order authorizing the Cove Point Liquefaction Project was not the cause of EarthReports's asserted upstream and downstream environmental impacts. *See* J.A. 688-689, 846-850. In fact, FERC cited its *Sabine* order as representative of its

“consistent[]” findings that upstream and downstream impacts need not be included in NEPA reviews of liquefaction facilities. *See* J.A. 688-689 & n.194; J.A. 846 & n.45.

Ultimately, EarthReports’s NEPA arguments are no different than those Sierra Club advanced and the Court rejected in *Freeport* and *Sabine*. That should come as no surprise, given that Sierra Club is a petitioner here as well. *See also* API Br. 1-2 & n.1. EarthReports’s arguments should therefore be rejected, just as they were rejected in *Freeport* and *Sabine*.

Respectfully submitted,

/s/ Catherine E. Stetson

J. Patrick Nevins

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cc: All counsel of record (via CM/ECF)